No. 21275

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant

v.

WEYERHAEUSER COMPANY,

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

REPLY TO PETITION FOR REHEARING

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The United States believes that the decision of this Court is correct. The opinion is supported by the record and does not overlook any controlling matters of law or fact. Weyerhaeuser Company's petition demonstrates no reason for a rehearing and should be denied. We will now treat seriatim the arguments raised by Weyerhaeuser Company.

1. (a) We agree with appellee that this Court's description of the hiatus area in dispute is incomplete. A complete description appears as a map in the district court's opinion (R. 96). In the pretrial order under agreed facts it was stipulated that the area in dispute was depicted by Exhibits 1 and 14 (R. 73). These exhibits have been filed with the Court. The description of the hiatus area presented in the opinion might be modified to conform to the stipulation. Certainly this is no reason for granting a rehearing, especially since the judgment directed is simply dismissal of the complaint and not a formal quiet title decree.

(b) This Court's opinion is in harmony with United States v. Hudspeth, 384 F.2d 683 (C.A. 9, 1967). Both opinions recognize that once land is patented the official survey on the ground--no matter how erroneous--is controlling. Appellee's mistake is its failure to understand what this Court has held in this case.

2. The competency of the official surveyors is irrelevant to the issue presented. The Court correctly recognized that "Neither [side] claims that Hathorn was a more competent surveyor than Haydon [sic], or vice versa" (Opinion,

p. 4-5). No matter how competent, or for that matter incom-
etent Heydon may have been, his was the official survey of
ownship 27 (R. 76).

3. Another irrelevancy raised by appellee is that
he Court overlooked the function of a standard parallel.
hat function--to correct for convergency of meridians--has
othing to do with the fact that the survey of Township 28
as based upon the standard parallel as surveyed on the ground
y Hathorn and that the survey of Township 27 was based upon
he standard parallel as surveyed on the ground by Heydon (R.
4-75, 76).

4. Appellee correctly claims that the "decision
states that neither party attempts to tell the court where
he 6th Standard Parallel really is, in the disputed area."
Neither side attempted to tell the Court where the 6th
Standard Parallel would be if it had been surveyed truly due
west as ideally intended. Indeed, neither the Hathorn line
nor the Heydon line was ideally located. Drawn ideally, the
true line would fall between Hathorn's monuments and Heydon's
monuments. However, this does not bear on the issue, which
is the effect of the surveyors' establishing on the ground two
separate lines.

5. Appellee's argument as to precisely when the Hathorn monuments were uncovered appears to be quibbling. The relationship of the two lines is shown by the recovered monuments (R. 96; Ex. 1, 14). The record shows that in 1961 the existence of two sets of monuments was discovered (R. 77). Whether Hathorn's monuments were known or unknown over the years has nothing to do with the legal effect of two sets of monuments not being on the same line. Heydon's monuments mark Township 27, and his survey of that township was officially approved in 1897 (R. 76); Hathorn's monuments mark Township 28, and his survey of that township was officially approved in 1856 (R. 74-75). Patents to the sections in Township 27, on the basis of which appellee makes its claim, were first issued beginning in 1903 (R. 37-38).

6. Weyerhaeuser Company's final assertion that the opinion leaves property owners without guidelines to resolve similar disputes is false and irrelevant. Indeed, the opinion is based upon the fundamental principle of public land law that "boundary lines actually run and marked in the surveys returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper boundary

nes of the sections, or subdivisions, for which they were tended * * *." 43 U.S.C. sec. 752; Cragin v. Powell, 128 S. 691, 696-700 (1888); United States v. State Investment ., 264 U.S. 206, 211-212 (1924). The opinion is based upon rule of repose.

CONCLUSION

For the foregoing reasons, appellee's petition for hearing should be denied.

Respectfully submitted,

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